

FILED
IN THE UNITED STATES DISTRICT COURT BILLINGS DIV.

FOR THE DISTRICT OF MONTANA 2008 JAN 25 PM 12 18

BILLINGS DIVISION

PATRICK E. DUFTY, CLERK

BY _____

ELAINE L. CHAO, SECRETARY OF
LABOR, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiffs

vs.

DIVERSIFIED TRANSFER &
STORAGE, INC., d/b/a DTS, and DTS
LOGISTICS, LLC, and JAY FOLEY,
individually,

Defendants.

CV-07-15-BLG-RFC DEPUTY CLERK

ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE

On January 2, 2007, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation. Magistrate Judge Ostby recommends this Court grant Defendant DTS Logistics' Motion for Summary Judgment (*Doc. 17*). *Doc. 26*.

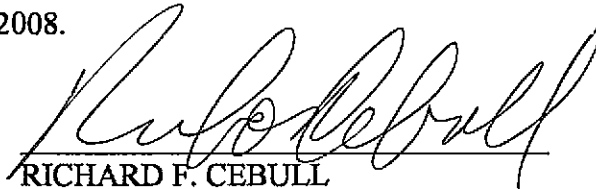
Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the January 2, 2007 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

Here, Magistrate Judge Ostby correctly concluded as a matter of law that DTS Logistics is not a joint employer of the subject employees. Specifically, even though the concept of joint employment is to be defined expansively under the Fair Labor Standards Act of 1938 ("FLSA"), *Torres-Lopez v. May*, 111 F.3d 633, 639 (9th Cir. 1997), none of the four factors identified by the Ninth Circuit as relevant to the issue of joint employment are present in this case. *See Bonnette v. Ca. Health & Welfare Agency*, 704 F.2d 1465, 1470 (9th Cir. 1983) (disapproved of on other grounds by *Garcia v. San Antonio Met. Trans. Auth.*, 469 U.S. 528 (1984)). Further, this situation is not analogous to the examples contained in the administrative regulations promulgated pursuant to the FLSA. *See* 29 C.F.R. § 791.2(b) (2007).

Accordingly, after a review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety. **IT IS HEREBY ORDERED** that DTS Logistics' Motion for Summary Judgment (*Doc. 26*) is **GRANTED**.

The Clerk of Court shall notify the parties of the entry of this Order.

DATED the 25 day of January, 2008.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE